

## GAMMON &amp; GRANGE, P.C.

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† OF COUNSEL

RECEIVED

MAY 5 1999

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

May 4, 1999

Magalie Roman Salas, Secretary  
Federal Communications Commission  
445 12th Street, S.W., Room 222  
Washington, D.C. 20554

- BY HAND -

Re: Amendment  
Artistic Airwave Broadcasters  
Temecula, California  
File No.: BPH-900122MP

Dear Ms. Salas:

Attached, please find an Amendment to the above-referenced application which proposes to substitute Temecula FM, LLC as the applicant. As noted in the Amendment, Temecula FM, LLC is a merger of the three remaining applicants for the Temecula station.

The Amendment is being submitted in conjunction with a Joint Request for Approval of Settlement Agreement which contemplates grant of the construction permit to Temecula FM, LLC. This Amendment is contingent on and subject to approval of the Joint Request for Approval of Settlement Agreement.

Respectfully submitted,

ARTISTIC AIRWAVE BROADCASTERS

By *A. Wray Fitch III*  
A. Wray Fitch III  
Its Counsel

No. of Copies rec'd 2  
List A B C D E

cc: Steve Cilurzo  
David Tillotson, Esq.  
Arthur Belendiuk, Esq.

[K:\0119\SALAS.AWF]

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MAY 5 - 1999

AMENDMENTFederal Communications Commission  
Office of Secretary

The pending application of Artistic Airwave Broadcasters for a construction permit for a new FM station to operate on Channel 233A at Temecula, California (BPH-900122MP) is hereby amended to substitute Temecula FM LLC ("Temecula FM") as the applicant entity and to provide the following information concerning Temecula FM:

1. Temecula FM is a limited liability company organized under the laws of the State of California on March 26, 1999.

2. Temecula FM is equally owned by Kimler Broadcasting, Inc., Artistic Airwave Broadcasters and Laura Wilkinson Herron. The sole stockholder of Kimler Broadcasting is Helen Jones and the general partners of Artistic Airwave Broadcasters are Steve Cilurzo and Audrey Cilurzo.

3. Steven Cilurzo and Kimler Broadcasting, Inc. are each applicants for a new FM station to operate on 103.3 MHz in Temecula, California.

4. Temecula FM has granted an option to acquire the station that is the subject of this application to Magic Broadcasting, Inc., a copy of which option is attached hereto.

Except as amended hereby, the information contained in the application as originally filed remains accurate.

ARTISTIC AIRWAVE BROADCASTERS

Date: 5/2/99By: Audrey Cilurzo  
Audrey Cilurzo, General Partner

## **PURCHASE OPTION AGREEMENT**

This Purchase Option Agreement, made and entered into this 4th day of May, 1999, by and between **TEMECULA FM, LLC** ("Temecula FM."), **MAGIC BROADCASTING, INC.** ("Magic") and **ARTISTIC AIRWAVES BROADCASTING** ("Artistic"):

### **WITNESSETH THAT:**

WHEREAS, the competing applicants for FM Channel 233A at Temecula, California (the "Station"), have entered into a Merger and Settlement Agreement (the "Merger Agreement") of even date herewith providing for the merger of their interests in the Station into Temecula FM which is jointly owned by them and have petitioned the FCC for approval of the Merger Agreement and grant of a construction permit for the Station to Temecula FM

WHEREAS, Magic wishes to acquire an option to purchase the Station from Temecula FM and Temecula FM is willing to grant Magic such an option on the terms set forth herein;

WHEREAS, in the event that Magic exercises the option granted to it hereby, Magic desires to purchase from Artistic and Artistic desires to sell to Magic certain equipment and property for use in the operation of the Station;

NOW, THEREFORE, in consideration of premises, the parties, intending to be legally bound, agree as follows:

1. **Grant of Option; Option Terms.** In consideration of the payment to Temecula FM of the "Option Price" specified in Section 2 hereof, Temecula FM hereby grants to Magic an exclusive and irrevocable option (the "Option") to acquire from Temecula FM the Station for a purchase price (the "Purchase Price") of One Million Five Hundred Thousand Dollars (\$1,500,000.00) on the terms and conditions set out in the Asset Purchase Agreement (the "Purchase Agreement") attached as Exhibit A hereto. The Option shall be exercisable by Magic giving notice to Temecula FM in the manner specified in Section 16 hereof that it is exercising the Option any time beginning with the effective date of an action by the FCC granting to Temecula FM a construction permit for the Station and extending to and including the date that is exactly six (6) months after the effective date of the action granting the construction permit (the "Expiration Date"). If Magic fails to exercise the Option prior to the Expiration Date, then the Option shall lapse and Magic shall have no right to purchase the Station pursuant to this Agreement.

2. **Option Price.** Simultaneously with the execution of this Agreement, Magic is delivering to David Tillotson, Esq., Arthur V. Belendiuk, Esq. and A. Wray Fitch, Esq. ("Escrow Agents") the sum of (\$300,000.00)(the "Option Price"), which sum shall be held by Escrow Agents pursuant to the terms of the Escrow Agreement between and among, Magic and Escrow Agents attached as Exhibit B hereto. In the event that Magic does not exercise the Option on or before the Expiration Date, on the day following the Expiration Date, Escrow Agents shall deliver the Option Price, together with all interest accrued thereon while held in escrow, to

Temecula FM. The Option Price will be immediately refunded to Magic upon the occurrence of any of the following events: (i) termination of this Agreement due to a material breach by Temecula FM of its obligations hereunder, or (ii) following exercise of the Option, final action by the FCC denying an application for consent to an assignment of the construction permit for the Station from Temecula FM to Magic for reasons entirely unrelated to either the qualifications of Magic to become the permittee of the Temecula FM or the failure of Magic to perform its obligations under the Purchase Agreement.

**3. Exercise of Option.** Magic may exercise the Option by written notice to Temecula FM as provided in Section 16 hereof. The notice of Magic's exercise of the Option shall be accompanied by a fully executed copy of the Purchase Agreement which shall be dated as of the date of the notice of the exercise of the Option and by a complete and duly executed assignee's portion of FCC Form 314. As expeditiously as possible, and at all events within ten (10) business days of receiving the notice of the exercise of the option, the executed Purchase Agreement and the executed assignee's portion of FCC Form 314, Temecula FM will prepare and execute the assignor's portion of FCC Form 314 and file the complete Form 314 with the FCC. Thereafter, Temecula FM and Magic shall take all actions necessary or appropriate to complete the transaction provided for in the Purchase Agreement as expeditiously as possible. The parties will cooperate fully in completing any aspect of the Purchase Agreement such as, by way of limited example, the Schedules referenced at Paragraphs 2.1, 2.2 and 2.3 of the Purchase Agreement.

**4. Assignment.** Neither party may assign its rights or obligations under this Agreement except with the consent of the other party, which consent will not be unreasonably withheld. Subject to the foregoing, this Agreement shall be binding upon, and shall inure to the benefit of the parties hereto and their respective successors and permitted assignees.

**5. FCC Consent.** Magic and Temecula FM each acknowledge that the exercise of the Option and acquisition of the Temecula FM by Magic is subject to the prior consent of the FCC. Nothing contained herein shall give Magic the right, directly or indirectly, to control, supervise, or direct the operation of the Temecula FM unless and until the required prior FCC consent has been obtained.

**6. Mutual Representations and Warranties.** Both Magic and Temecula FM represent and warrant that they are legally qualified, empowered and able to enter into this Agreement, that the execution, delivery and performance hereof shall not constitute a breach or violation of any agreement, contract or other obligation to which either party is subject or by which it is bound and that they have had the benefit of legal advice with respect to this Agreement.

**7. Brokerage.** Each party represents to the other that it has not employed any broker or finder in connection with the Option or the transaction provided for in the Purchase Agreement and each agrees to indemnify the other and hold it harmless against any claim from any broker or finder based upon any agreement, arrangement, or understanding alleged to have been made by Temecula FM or Magic, as the case may be.

8. **Purchase of Equipment and Property.** In the event that Magic exercises the Option, Magic agrees to purchase from Artistic and Artistic agrees to sell to Magic the property and equipment owned by Artistic listed in Exhibit A hereto for a cash purchase price, to be paid to Artistic simultaneously with the Closing under the Purchase Agreement, of \$75,000.00.

9. **Attorneys' Fees.** If any party invokes the dispute resolution procedures referred to in Section 15 hereof, or initiates litigation involving this Agreement, the prevailing party or parties in such action shall be entitled to receive reimbursement from the other party or parties for all reasonable attorneys' fees incurred by the prevailing party in respect of that disputes resolution process or litigation, including any appeal, and such reimbursement may be included in the judgment or final order issued in that proceeding.

10. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument.

11. **Entire Agreement.** This Agreement including the Exhibits attached hereto embodies the entire agreement and understanding of the parties relating to the matters that are the subject of this Option and supersedes any and all prior agreements, arrangements, and understandings relating to matters provided for herein. No amendment, waiver of compliance with any provision or condition hereof, or consent pursuant to this Agreement will be effective unless evidenced by an instrument in writing signed by the parties.

12. **Headings.** The headings are for convenience only and will not control or affect the meaning or construction of the provisions of this Agreement.

13. **Governing Law.** The obligations of Temecula FM and Magic are subject to applicable federal, state and local law, rules and regulations, including, but not limited to, the Communications Act of 1934, as amended, and the rules, regulations and policies of the FCC. The construction and performance of this Agreement will be governed by the laws of the State of California, excluding the choice of law rules utilized in that jurisdiction.

14. **Magic's Right to Specific Performance.** Temecula FM agrees and acknowledges that the Temecula FM constitutes unique property that cannot be readily obtained on the open market, that the damages Magic would suffer if Temecula FM were to breach its obligation to sell the Temecula FM to Magic on the terms set out in the Purchase Agreement following exercise of the Option are not readily susceptible to being measured in monetary terms, and that, consequently, Magic would be irreparably injured if its rights under this Agreement were not specifically enforced. Therefore, Magic shall have the right, if it is not in material default in its obligations hereunder, specifically to enforce its rights to acquire the Temecula FM pursuant to the Option and Temecula FM agrees to waive the defense in any such suit that Magic has an adequate remedy at law and to interpose no opposition, legal or otherwise, as to the propriety of specific performance as a remedy.

**15. Disputes Resolution.** Except for Magic's right to enforce its rights under the Option by specific performance, if any dispute arises as to the interpretation or enforcement of this Agreement, the parties agree to use their best, good faith, efforts to resolve the dispute between themselves. If, despite such efforts, the dispute is not resolved within sixty (60) days, the parties agree to resolve the dispute pursuant to the disputes resolution procedures set out in Section 11 of the Purchase Agreement and they further agree that any decision arrived at under those procedures shall be binding upon them and enforceable in a court of law.

**16. Notices.** Any notice, demand, or request required or permitted to be given under the provisions of the Agreement shall be in writing, shall be delivered by overnight courier service or facsimile, and shall be deemed to have been duly delivered on the date of personal delivery by courier or on the date of delivery via fax; provided that on the same day as any notice is sent via facsimile notice shall also be sent via overnight courier. Notice shall be delivered to the following addresses, or to such other address as a party may specify in writing:

To Temecula FM: c/o Helen Jones  
29771 Bonanza Place  
Canyon Lake, CA 92587  
Fax: 909-244-4348

With copy to (which shall not constitute notice):

David Tillotson, Esq.  
4606 Charleston Terrace, N.W.  
Washington, DC 20007-1911  
Fax: 202/625-6241

and

Arthur V. Belendiuk, Esq.  
Smithwick & Belendiuk, P.C.  
1990 M Street, N.W.  
Suite 510  
Washington, D.C. 20036  
Fax: 202/785-2804

and

A. Wray Fitch, Esq.  
Gammon & Grange, P.C.  
8280 Greensboro Drive, 7th Floor  
McLean, VA 22102-3807  
Fax: 703/761-5023

To Magic: Magic Broadcasting, Inc.  
544 Mulberry Street  
7th Floor  
Macon, GA 31202

Fax: 912-745-2078  
Attn: Don McCoy, President

To Artistic: Artistic Airwaves Broadcasting  
1839 Avenida Flores  
Encinitas, CA 92024  
Fax: 760-753-6636  
Attn: Audrey Cilurzos, General Partner

Either party may change its address for notices by written notice to the other given pursuant to this Section. Any notice purportedly given by a means other than as set forth in this Section shall be deemed ineffective.

IN WITNESS WHEREOF, the parties have executed this Asset Purchase Option Agreement as of the date first written above.

**TEMECULA FM, LLC**

By: Helen Jones  
Helen Jones, President of Kimler  
Broadcasting, Inc., Member

**MAGIC BROADCASTING, INC.**

By: Donald McCoy  
Donald McCoy, President

**ARTISTIC AIRWAVES BROADCASTING**

By: Audrey Cilurzos  
Audrey Cilurzos, General Partner

EXHIBIT A

ARTISTIC AIRWAVES

(TRANSMITTER SITE EXPENSES)

1. CROCKETT ELECTRIC 12/2/94 JEFF CROCKETT (909)676-1518  
\* ELECTRICAL SERVICE TO RADIO ANTENNA AND HOUSING  
FOR SERVICE.  
CHECK #4136.....\$ 57.00
2. CROCKETT ELECTRIC 12/30/94  
\* POWER TO ANTENNA BUILDING \$ 3,982.75
3. CROCKETT ELECTRIC 7/20/95  
\* HANG EXTRA FIXTURES (4 TUBES) 48.00  
\* 30 AMP TWIST-LOCK RECEPTICAL 40.00  
\* THERMOSTAT FOR AC 70.00  
\$ 158.00
4. CROCKETT ELECTRIC 6/14/94  
\* PEDESTAL & POWER FOR TRANSMITTER SITE  
\$ 3,925.00
5. VISSER CONSTRUCTION 6/15/94  
\* COST OF FORKLIFT AND LABOR TO UNLOAD AND LEVEL  
IN POSITION ON NEW 2x6 PRESSURE TREATED LUMBER.  
\$ 1,368.00
6. BOB DENGLE 676-1376  
\* REVISE PLAN FOR FOUNDATIONS 60.00  
\* PREPARE ELECTRICAL PLAN 195.00  
\$ 255.00
7. MANNING ENGINEERING 7/25/94  
\* HOLDDOWNS FOR PORTABLE BUILDING \$ 100.00
8. MARKHAM & ASSOC 6/8/94  
\* REVISED PERMIT FOR PLOT PLAN  
\* LEGAL & INTEREST  
\* DRAWING NOTES FOR SUBMITTAL  
Payments 8/22/94....\$500.  
11/21/94.... 227.  
\$727.  
plus interest \$ 855.83



# ARTISTIC AIRWAVE

## (TRANSMITTER SITE EXPENSES)

9.	INDUSTRIAL LIQUIDATORS	
	* 19" RACK	\$ 80.81
10.	SES ELECTRIC COMM 11/10/94	
	* ANTENNA/MOUNT/REDUCER/TRANSPORTATION	\$ 5,308.00
11.	TOWER STRUCTURES INC 11/30/93	
	* ERECT TOWER	12,440.00
	* DESIGN/CONSTRUCT-FURNISH 100' TOWER	28,987.00
		<u>\$41,427.00</u>
12.	AIR TOUCH CELLULAR 11/10/94	
	* BUILDING	\$ 7,000.00
13.	CALVARY CHAPEL	
	* PLOT PLAN FEE	3,132.00
	* BUILDING & SAFETY FEE	182.25
	* BUILDING & SAFETY PERMIT	233.84
		<u>3,570.09</u>
	CILURZO'S HALF	<u>\$ 1,785.00</u>

### ARTISTICE TOTAL TRANSMITTER SITE EXPENSES

\$66,302.39

Plus Lease Expenses \$ 8,697.61\*

Total Asset Purchase Amount \$ 75,000.00

\* Magic Broadcasting, Inc. will pay Artistic Airwaves an additional \$8,697.61, bringing the total consideration to be paid to Artistic to \$75,000.00, upon Artistic validly assigning a transmitter site lease to Magic Broadcasting, Inc. with terms of five years at \$350.00 per month.

  
Steve Cilurzo

## **ASSET PURCHASE AGREEMENT**

This Agreement, made and entered into as of this \_\_\_ day of \_\_\_\_\_, 1999, by and between **TEMECULA FM, LLC** ("Seller") and **MAGIC BROADCASTING, INC.** ("Buyer")

### **WITNESSETH THAT:**

WHEREAS, Seller is the owner and permittee of Station \_\_\_\_\_, which is authorized to operate on Channel 233A at Temecula, California (the "Station");

WHEREAS, the parties desire that Buyer purchase from Seller all the assets used or useful in the operation of the Station and acquire the authorizations issued by the Federal Communications Commission (the "Commission") for the operation of the Station; and

WHEREAS, the authorizations issued by the Commission may not be assigned to Buyer without the Commission's prior consent.

NOW THEREFORE, in consideration of the mutual promises and covenants herein contained, the parties, intending to be legally bound, agree as follows:

### **1. RULES OF CONSTRUCTION**

**1.1. Defined Terms.** As used in this Agreement, the following terms shall have the following meanings:

- "Assignment Application" means the application on FCC Form 314 that Seller and Buyer shall join in and file with the Commission requesting its consent to the assignment of the FCC Licenses from Seller to Buyer.
- "Closing" means the consummation of the Transaction.
- "Closing Date" means the date on which the Closing takes place, as determined pursuant to Section 9 hereof.
- "Commission" or "FCC" means the Federal Communications Commission.
- "Final Order" means any Commission action that, by lapse of time or otherwise, is no longer subject to administrative or judicial reconsideration, review, appeal or stay.
- "Governmental Authority" means any nation or government, any state or other political subdivision thereof, and any agency, court or other entity that exercises executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.
- "Purchase Option Agreement" means the Purchase Option Agreement between Buyer and Seller dated as of February \_\_, 1999.

- "Transaction" means the sale and purchase and assignments and assumptions contemplated by this Agreement and the respective obligations of Seller and Buyer set forth herein.

1.2. **Other Definitions.** Other capitalized terms used in this Agreement shall have the meanings ascribed to them herein.

1.3. **Number and Gender.** Whenever the context so requires, words used in the singular shall be construed to mean or include the plural and vice versa, and pronouns of any gender shall be construed to mean or include any other gender or genders.

1.4. **Headings and Cross-References.** The headings of the Sections and Paragraphs hereof have been included for convenience of reference only, and shall in no way limit or affect the meaning or interpretation of the specific provisions of this Agreement. All cross-references to Sections or Paragraphs herein shall mean the Sections or Paragraphs of this Agreement unless otherwise stated or clearly required by the context. All references to Appendices herein shall mean the Appendices to this Agreement which have been separately initialed for identification by Seller and Buyer. Words such as "herein" and "hereof" shall be deemed to refer to this Agreement as a whole and not to any particular provision of this Agreement unless otherwise stated or clearly required by the context.

1.5. **Computation of Time.** Whenever any time period provided for in this Agreement is measured in "business days" there shall be excluded from such time period each day that is a Saturday, Sunday, recognized federal legal holiday, or other day on which the Commission's offices are closed and are not reopened prior to 5:30 p.m. Washington, D.C. time. In all other cases all days shall be counted.

2. **ASSETS TO BE CONVEYED; EXCLUDED ASSETS.** On the Closing Date, Seller will sell, assign, transfer, convey and deliver to Buyer all of the assets owned by Seller used or useful for the operation of the Station free and clear of all liens and encumbrances whatsoever except for statutory liens for taxes not yet due (the "Purchased Assets"):

2.1. **Licenses.** The construction permit and other authorizations issued by the Commission for the operation of the Station listed in Schedule 2.1 hereof (the "FCC Licenses"), and all other transferrable licenses, permits and authorizations issued by any other Governmental Authorities that are used in or necessary for the lawful operation of the Station as presently operated by Seller.

2.2. **Contracts.** The contracts, leases and agreements listed in Schedule 2.2 hereto and all other contracts, leases, and agreements entered into between the date hereof and the Closing Date that have been approved by Buyer in writing (the "Contracts").

2.3. **Intangible Property.** All Seller's right, title and interest in and to the Station's call signs, slogans, logos, trademarks, and similar materials and rights and the goodwill and other intangible assets arising from the business of the Station (the "Intangible Property").

2.5 **Business Records.** All business records of Seller (including without limitation logs, public file materials, and engineering records) relating to or used in the operation of the Station and not relating solely to Seller's internal company affairs (the "Business Records").

**2.6. Excluded Assets.** Notwithstanding the foregoing, the Purchased Assets shall not include cash or cash equivalents belonging to Seller, insurance claims or other claims that Seller may have against third parties.

**2.7. Seller's Liabilities.** Buyer does not and shall not assume or be deemed to assume, pursuant to this Agreement or otherwise, any liabilities, obligations, or commitments of Seller of any nature whatsoever except for obligations under the Contracts to be assumed by Buyer hereunder.

**3. PURCHASE PRICE AND METHOD OF PAYMENT.** The purchase price for the Purchased Assets is One Million Five Hundred Thousand Dollars (\$1,500,000) (the "Purchase Price"). The Purchase Price shall be paid by Buyer on the Closing Date as follows:

(a) Buyer and Seller shall jointly instruct the Escrow Agents to deliver the Three Hundred Thousand Dollar (\$300,000.00) Option Price being held by Escrow Agents pursuant to the Escrow Agreement (but not the interest earned thereon) to Seller in immediately available funds and such amount shall be credited in full against the Purchase Price;

(c) Buyer shall deliver to Seller in immediately available funds the cash sum of One Million Two Hundred Thousand Dollars (\$1,200,000.00).

**4. SELLER'S REPRESENTATIONS, WARRANTIES, AND COVENANTS.** Seller hereby makes the following representations, warranties, and covenants:

**4.1. Existence, Power and Identity.** Seller is a limited liability company duly formed and validly existing under the laws of the State of California with full power under its articles of organization to enter into and perform this Agreement.

**4.2. Binding Effect.** The execution, delivery, and performance of this Agreement by Seller has been duly authorized by all necessary action of Seller's members. This Agreement has been duly executed and delivered to Buyer by Seller and constitutes a legal, valid, and binding obligation of Seller, enforceable in accordance with its terms.

**4.3. No Violation.** The execution and performance of this Agreement by Seller will not violate Seller's articles of organization or any judgment, decree or order to which Seller is subject, or breach any contract, agreement or other commitment to which Seller is a party or by which Seller is bound.

**4.4. Conveyance of Assets.** At Closing, Seller shall convey to Buyer good and marketable title to all the Purchased Assets, free and clear of all liens, pledges, collateral assignments, security interests, leases, easements, covenants, restrictions and encumbrances or other defects of title.

**4.5. Governmental Authorizations.** The FCC Licenses are in full force and effect, are subject to no unusual or materially adverse conditions or restrictions, and are unimpaired by any acts or omissions of Seller or Seller's employees or agents. There is not now pending or to Seller's knowledge threatened any action by the FCC or other party to suspend, revoke, cancel, refuse to renew, or modify adversely the FCC Licenses and, to Seller's knowledge, no event has occurred that allows, or, after lapse of time or notice or both, would allow, the revocation or termination of the FCC Licenses or the

imposition of any restriction on the FCC Licenses of such a nature that may prevent the operation of the Station with the facilities specified in the FCC Licenses.

**4.6 Insolvency Proceedings.** No insolvency proceedings of any character, including without limitation bankruptcy, receivership, organization, composition or arrangement with creditors, voluntary or involuntary, affecting Seller, Seller's principals, or the Purchased Assets are pending or threatened. Seller has not made an assignment for the benefit of creditors or taken any action with a view to, or that would constitute a valid basis for, the institution of any insolvency proceedings.

**4.7. Litigation.** Except for proceedings affecting radio broadcasters generally, there is no complaint, investigation, or proceeding pending or, to the best of Seller's knowledge, threatened before or by the Commission, any other Governmental Authority, or any other person or entity relating to the business or operations of the Station. There is no other litigation, action, suit, investigation or proceeding pending or, to the best of Seller's knowledge, threatened that may give rise to any claim against any of the Purchased Assets or adversely affect Seller's ability to consummate the Transaction as provided herein. Seller is not aware of any facts that could reasonably result in any such proceedings.

**4.8 Taxes.** Seller has filed all federal, state and local tax returns that required to be filed and Seller has, paid and discharged all taxes, assessments, excises and other levies relating to the assets to be purchased hereunder, which, if due and not paid, would interfere with Buyer's full enjoyment and use of the Purchased Assets after Closing, except for such taxes, assessments, and other levies as will not be due until after the Closing Date.

**5. BUYER'S REPRESENTATIONS, WARRANTIES AND COVENANTS.** Buyer hereby makes the following representations, warranties and covenants:

**5.1. Existence and Power.** Buyer is a corporation organized and in good standing under the laws of the State of \_\_\_\_\_ with full power to enter into and perform this Agreement.

**5.2. Binding Effect.** The execution, delivery, and performance of this Agreement by Buyer has been duly authorized by all necessary partnership action. This Agreement has been duly executed and delivered by Buyer and constitutes a legal, valid, and binding obligation of Buyer, enforceable in accordance with its terms.

**5.3. No Violation.** None of (i) the execution, delivery and performance of this Agreement by Buyer, (ii) the consummation of the Transaction, or (iii) Buyer's compliance with the terms and conditions hereof will, with or without the giving of notice or the lapse of time or both, conflict with, breach the terms and conditions of, constitute a default under, or violate Buyer's certificate of limited partnership or limited partnership agreement or any judgment, decree, order, agreement, lease or other instrument to which Buyer is a party or by which Buyer is legally bound, or, to the best of Buyer's knowledge, any law, rule or regulation applicable to Buyer.

**5.4. Licensee Qualifications.** There is no fact that would, under present law (including the Communications Act of 1934, as amended) and the present rules and regulations of the Commission, disqualify Buyer from being the assignee of the FCC Licenses or the owner and operator of the Station. Buyer will not take any action that Buyer knows, or has reason to believe, would result in such disqualification.

**5.5. Litigation.** There is no action, suit, investigation or other proceeding pending or threatened that may adversely affect Buyer's ability to perform its obligations under this Agreement in accordance with the terms hereof, and Buyer is not aware of any facts that could reasonably result in any such proceeding.

**5.6. Financial Qualification.** Buyer has the financial resources and capabilities to consummate and fully perform this Agreement in accordance with its terms.

**6. PRE-CLOSING OBLIGATIONS.** The parties covenant and agree as follows with respect to the period prior to Closing:

**6.1. Application for Commission Consent.** Within five (5) business days after the execution of this Agreement, the parties shall join in filing the Assignment Application with the FCC. After the application is filed, Buyer and Seller shall diligently and in good faith take all steps necessary or desirable and proper expeditiously to prosecute the Assignment Application and to obtain the Commission's determination that grant of the Assignment Application will serve the public interest, convenience and necessity. The failure by either party diligently to prosecute its portion of the Assignment Application shall be deemed a material breach of this Agreement.

**6.2. Administrative Violations.** If Seller receives any finding, order, complaint, citation or notice prior to Closing which states that any aspect of the Station's operations violates any rule, regulation or order of the Commission or of any other Governmental Authority (an "Administrative Violation"), including without limitation any rule, regulation or order concerning environmental protection, the employment of labor, or equal employment opportunity, Seller shall promptly notify Buyer of the Administrative Violation, use its best efforts to remove or correct the Administrative Violation, and Seller shall be responsible for the payment of all costs associated therewith, including any fines or back pay that may be assessed unless the Administrative Violation is attributable to Buyer's breach of its obligations under the Time Brokerage Agreement, in which event Buyer shall be responsible for payment of all costs associated with the violation.

**6.3. Control of Station.** This Agreement shall not be consummated until after the Commission has given its written consent thereto, and between the date of this Agreement and the Closing Date, Buyer shall not directly or indirectly control, supervise or direct, or attempt to control, supervise or direct the operations of the Station. Such operations shall be the sole responsibility of Seller.

**6.4. Consents.** If any of the Contracts to be assigned to Buyer requires the consent of any third party in order for Seller to assign that Contract to Buyer, Seller will use its best efforts to obtain such consent prior to Closing.

**7. CONDITIONS PRECEDENT.**

**7.1. Mutual Conditions.** The obligation of both Buyer and Seller to consummate the Transaction is subject to the satisfaction of each of the following conditions:

(a) **Approval of Assignment Application.** The Commission shall have granted the Assignment Application and such grant shall be in full force and effect on the Closing Date.

(b) **Absence of Litigation.** As of the Closing Date, no action, suit or proceeding seeking to enjoin, restrain, or prohibit the consummation of the Transaction shall be pending before any court, the Commission, or any other Governmental Authority; provided, however, that this Section may not be invoked by a party if any such action, suit, or proceeding was solicited or encouraged by, or instituted as a result of any act or omission of, such party.

**7.2. Conditions to Buyer's Obligation.** In addition to satisfaction of the mutual conditions contained in Section 8.1, the obligation of Buyer to consummate the Transaction is subject, at Buyer's option, to the satisfaction of each of the following conditions:

(a) **Representations and Warranties.** The representations and warranties of Seller to Buyer shall be true, complete, and correct in all material respects as of the Closing Date with the same force and effect as if then made.

(b) **Final Order.** The FCC's action granting the assignment application shall be final in the sense that it is no longer subject to administrative or judicial reconsideration or review.

(c) **Compliance with Conditions.** All of the terms, conditions and covenants to be complied with or performed by Seller on or before the Closing Date shall have been duly complied with and performed in all material respects.

(d) **Closing Documents.** Seller shall deliver to Buyer such assignments, bills of sale, and other instruments of conveyance as are necessary to vest title to the Purchased Assets in Buyer, all of which documents shall be dated as of the Closing Date, duly executed by Seller, and in such form as is customary for transactions of this type and reasonably acceptable to Buyer.

**7.3. Conditions to Seller's Obligation.** In addition to satisfaction of the mutual conditions contained in Section 8.1, the obligation of Seller to consummate the Transaction is subject, at Seller's option, to satisfaction of each of the following conditions:

(a) **Representations and Warranties.** The representations and warranties of Buyer to Seller shall be true, complete and correct in all material respects as of the Closing Date with the same force and effect as if then made.

(b) **Compliance with Conditions.** All of the terms, conditions and covenants to be complied with or performed by Buyer on or before the Closing Date shall have been duly complied with and performed in all material respects.

(c) **Payment.** Buyer shall pay the Purchase Price in the manner specified in Section 3 hereof.

**8. CLOSING.** Unless Seller and Buyer agree otherwise, the Closing Date shall be the fifth (5th) business day after the date on which all of the closing conditions have been satisfied or waived. Closing shall be accomplished on the Closing Date by exchanging the closing documents required by this Agreement and such other closing documents as the parties may reasonably require by

mail or air courier and delivering the cash portion of the Purchase Price to Seller by air courier or wire transfer.

## **9. DEFAULT AND REMEDIES.**

**9.1. Opportunity to Cure.** If either party believes the other to be in default hereunder, the former party shall provide the other with written notice specifying in reasonable detail the nature of such default. If the default has not been cured by the earlier of: (i) the Closing Date, or (ii) within ten (10) days after delivery of that notice (or such additional reasonable time as the circumstances may warrant provided the party in default undertakes diligent, good faith efforts to cure the default within such ten (10) day period and continues such efforts thereafter), then the party giving such notice may exercise the remedies available to such party pursuant to this Section, subject to the right of the other party to contest such action through appropriate proceedings.

**9.2. Seller's Remedies.** If the Closing of the Transaction does not occur due to a default of Buyer in its obligations hereunder, and if Seller is not also in material default hereunder, the Option Price and all interest accrued thereon shall be immediately delivered to Seller by Escrow Agent, and Seller shall have no recourse against Buyer for any loss or damages that may have been suffered by Seller as a consequence of Buyer's default.

**9.3. Buyer's Remedies.** Seller agrees that the Purchased Assets include unique property that cannot be readily obtained on the open market and that Buyer will be irreparably injured if this Agreement is not specifically enforced. Therefore, Buyer shall have the right, if Buyer is not in default in its obligations hereunder, specifically to enforce Seller's performance under this Agreement, and Seller agrees to waive the defense in any such suit that Buyer has an adequate remedy at law and to interpose no opposition, legal or otherwise, as to the propriety of specific performance as a remedy. Except as otherwise specifically stated elsewhere in this Agreement, this right to compel specific performance is the sole remedy available to Buyer in the event of a breach by Seller.

## **10. TERMINATION.**

**10.1. Failure to Obtain FCC Consent.** This Agreement may be terminated at the option of either Seller or Buyer upon written notice to the other if the Closing has not occurred within nine (9) months after the date on which the FCC releases a public notice that the Assignment Application has been accepted for filing; provided, however, that a party may not terminate this Agreement if such party is in default hereunder, or if a delay in any decision or determination by the FCC respecting the Assignment Application has been caused or materially contributed to (i) by any failure of such party to furnish, file or make available to the FCC information within its control; (ii) by the willful furnishing by such party of incorrect, inaccurate or incomplete information to the FCC; or (iii) by any other action taken by such party for the purpose of delaying the FCC's decision or determination respecting the Assignment Application.

**10.2. Termination Due to Breach.** This Agreement may be terminated by either party due to a material breach of this Agreement by the other party upon the nonbreaching party giving written notice of such termination. In such event, the nonbreaching party shall be entitled to the remedies specified in Sections 11.2 and 11.3 hereof.

## **11. ARBITRATION.**



**11.1. Submission of Disputes to Arbitration.** Except (i) for the right of Buyer to seek specific performance of Seller's obligation to consummate this Agreement or (ii) for the right of either party to enforce the provisions of any determination made pursuant to this section, the parties agree to resolve any disputes arising out of or in connection with this Agreement by arbitration before a single arbitrator pursuant to the rules of the American Arbitration Association. The venue for such arbitration shall be San Diego, California.

**11.2. Binding Effect.** The decision of the arbitrator will be binding and final with respect to both parties and may be enforced by seeking preliminary and permanent injunctive relief or entry of a judgment by a court of competent jurisdiction.

**11.3. Costs and Fees.** Each party shall pay one half the fees and expenses in connection with any arbitration under this Section unless the arbitration panel determines that the position of a party lacks substantial merit or was taken primarily to delay or otherwise impair the business efforts of the other party, in which event the party with respect to which such determination is directed will pay the other party's reasonable attorney's fees in connection with the arbitration.

## **12. GENERAL PROVISIONS.**

**12.1 Brokerage.** Each party represents to the other that it has not employed any broker or finder in connection with the Transaction and agree that each shall indemnify and hold each other harmless against any claim from any broker or finder based upon any agreement, arrangement, or understanding alleged to have been made by Seller or Buyer, as the case may be.

**12.2 Expenses.** All Commission filing fees for the Assignment Application, and all recording costs, transfer taxes, document stamps, and other similar charges in connection with the Transaction shall be paid by Buyer. Except as otherwise provided herein or in the Purchase Option Agreement, all other expenses incurred in connection with this Agreement or the Transaction shall be paid by the party incurring those expenses whether or not the Transaction is consummated.

**12.3 Notices.** Any notice, demand, or request required or permitted to be given under the provisions of the Agreement shall be in writing, shall be delivered by overnight courier service or facsimile, and shall be deemed to have been duly delivered on the date of personal delivery by courier or on the date of delivery via fax; provided that on the same day as any notice is sent via facsimile notice shall also be sent via overnight courier. Notice shall be delivered to the following addresses, or to such other address as a party may specify in writing:

To Seller: TEMECULA FM, LLC  
c/o Helen Jones  
29771 Bonanza Place  
Canyon Lake, CA 92587  
Fax: 909-244-4348

With copy to (which shall not constitute notice):

David Tillotson, Esq.  
4606 Charleston Terrace, N.W.  
Washington, DC 20007-1911  
Fax: 202/625-6241

and

Arthur V. Belendiuk, Esq.  
Smithwick & Belendiuk, P.C.  
1990 M Street, N.W.  
Suite 510  
Washington, D.C. 20036  
Fax: 202/785-2804

and

A. Wray Fitch, Esq.  
Gamon & Grange, P.C.  
8280 Greensboro Drive, 7th Floor  
McLean, VA 22102-3807  
Fax: 703/761-5023

To: Buyer Magic Broadcasting, Inc.  
c/o U.S. Broadcasting  
P.O. Box 900  
544 Mulberry Street  
Macon, GA 31202 (mail) 31201 courier  
Fax: 912-745-2078

With Copy to: David Tillotson, Esq.  
4606 Charleston Terrace, N.W.  
Washington, DC 20007-1911

Either party may change its address for notices by written notice to the other given pursuant to this Section. Any notice purportedly given by a means other than as set forth in this Section shall be deemed ineffective.

**12.4 Assignment.** Neither party may assign its rights and obligations hereunder without the written consent of the other party which will not be unreasonably withheld. Subject to the foregoing, this Agreement shall be binding upon, inure to the benefit of, and be enforceable by the parties hereto and their respective successors and assignees.

**12.5 Exclusive Dealings.** For so long as this Agreement remains in effect, neither

Seller nor any person acting on Seller's behalf shall solicit, initiate, or accept any offer from, or conduct any negotiations with, any person concerning the acquisition of the Station or the Purchased Assets, directly or indirectly, by any party other than Buyer or Buyer's permitted assignees.

**12.6 Third Parties.** Nothing in this Agreement, whether express or implied, is intended to: (i) confer any rights or remedies on any person other than Seller, Buyer, and their respective successors and permitted assignees; (ii) to relieve or discharge the obligations or liability of any third party; or (iii) to give any third party any right of subrogation or action against either Seller or Buyer.

**12.7 Indulgences.** Unless otherwise specifically agreed in writing to the contrary: (i) the failure of either party at any time to require performance by the other of any provision of this Agreement shall not affect such party's right thereafter to enforce the same; (ii) no waiver by either party of any default by the other shall be taken or held to be a waiver by such party of any other preceding or subsequent default; and (iii) no extension of time granted by either party for the performance of any obligation or act by the other party shall be deemed to be an extension of time for the performance of any other obligation or act hereunder.

**12.8. Prior Negotiations.** This Agreement supersedes in all respects all prior and contemporaneous oral and written negotiations, understandings and agreements between the parties with respect to the subject matter hereof. All of said prior and contemporaneous negotiations, understandings and agreements are merged herein and superseded hereby.

**12.9. Schedules and Exhibits.** The schedules and exhibits attached hereto or referred to herein are a material part of this Agreement, as if set forth in full herein.

**12.10. Entire Agreement; Amendment.** This Agreement, including the Schedules hereto and the Purchase Option, collectively set forth the entire understanding between the parties in connection with the Transaction, and there are no terms, conditions, warranties or representations other than those contained, referred to or provided for herein and therein. Neither this Agreement nor any term or provision hereof may be waived, altered or amended in any manner except by an instrument in writing signed by the party against whom the enforcement of any such change is sought.

**12.11 Counsel.** Each party has been represented by its own counsel in connection with the negotiation and preparation of this Agreement and, consequently, each party hereby waives the application of any rule of law that would otherwise be applicable in connection with the interpretation of this Agreement, including but not limited to any rule of law to the effect that any provisions of this Agreement shall be interpreted or construed against the party whose counsel drafted the provision.

**12.12. Governing Law.** This Agreement shall be governed by, and construed and enforced in accordance with the laws of the State of California without regard to the choice of law rules utilized in that jurisdiction.

**12.13. Severability.** If any term of this Agreement is illegal or unenforceable at law or in equity, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby. Any illegal or unenforceable term shall be deemed to be void and of no force and effect only to the minimum extent necessary to bring such term within the provisions of applicable law and such term, as so modified, and the balance of this Agreement shall then be fully enforceable.

**12.14. Counterparts.** This Agreement may be signed in any number of counterparts with the same effect as if the signature on each such counterpart were on the same instrument. Each fully executed set of counterparts shall be deemed to be an original, and all of the signed counterparts together shall be deemed to be one and the same instrument.

IN WITNESS WHEREOF, and to evidence their assent to the foregoing, Seller and Buyer have executed this Asset Purchase Agreement as of the date first written above.

**TEMECULA FM, LLC**

By: \_\_\_\_\_  
Member

**MAGIC BROADCASTING, INC.**

By: \_\_\_\_\_  
Donald McCoy, President

TEMECULA/PN/ASSETPUR.AGT

## **SCHEDULE 2.1**

### **FCC Licenses**

Construction Permit for Channel 233A, Temecula, CA